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Before the Surface Transportation Board

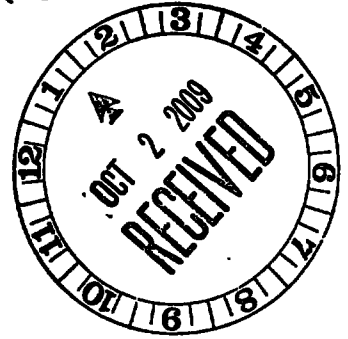
BNSF Railway Co. --)
Abandonment Exemption -) AB 6 (Sub-no. 468X)
in Kootenai County, ID)

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Office of Proceedings

OCT 2 - 2009

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Public Record

Reply
on behalf of
North Idaho College Foundation
to
Comments of Pan-American Railway, Inc.



North Idaho College Foundation supports the petition for exempt abandonment authority filed by BNSF Railway in this proceeding, including specifically BNSF's request for exemption from OFA procedures under 49 U.S.C. 10904.

Pan-American Railway, Inc. ("PAR") filed comments on September 15 objecting to the exemption requested by BNSF from OFA procedures under section 10904. PAR stated that it wished to file an OFA to acquire the line. For the reasons stated below, PAR's objections to BNSF's request for an exemption from OFA lacks any merit.

"The OFA provisions are intended to permit a party genuinely interests in provided continued rail service on a line that would otherwise be abandoned to acquire that line for continued rail use." Los Angeles County Metropolitan Transportation Authority - Abandonment Exemption - in Los Angeles County, CA, AB 409 (sub-no. 5X), served July 17, 2008, at p. 5. In other words, OFA's are for continued rail use. Here, there is not the slightest possibility of continued rail use.

PAR does not identify any shippers it would serve. There are none. PAR's entire showing is limited to stating, in a

confused fashion¹, that it wishes to serve potential shippers at two former mill sites on the line: the DeArmond mill site (at the confluence of the Spokane River and Lake Coeur d'Alene) and the Atlas site.

As to the DeArmond site, PAR represents that it would "attempt" to form an as yet non-existent Port Authority or perhaps get the City of Post Falls acquire one half of the site and operate it "as a log terminal for transloading logs from water to rail, and for a future rail passenger terminal." PAR Reply at p. 6. This conjecture on the part of PAR is not a representation as to a potential customer; it is a representation that PAR will "attempt" to get a public entity to buy a site on which a potential customer might then locate. But even this conjecture is meaningless: the property is not available for sale even if PAR could get a Port Authority formed, or somehow persuade Post Falls to get involved (which it is most certainly not at this date). North Idaho College Foundation owns the site, it is being developed as a college campus, and it is not for sale.

North Idaho College Foundation is a 501(c)(3) foundation that supports the activities of North Idaho College. The main North Idaho College campus is immediately adjacent to the DeArmond mill site. North Idaho College Foundation purchased the DeArmond mill site from Stimson Lumber Company, the former owner

¹ At some points, PAR states that it wishes to acquire the line, but at p. 7 of its Reply, it refers to a non-existent "Port District's acquisition of the involved [r]ail [l]ine."

of the site, for an amount in the low eight figures. All lumber buildings and facilities have been removed. North Idaho College Foundation has leased the entire site to North Idaho College. North Idaho College plans to develop the entire site with buildings for college classrooms, support facilities and possibly residence halls as an extension of its main campus, which as noted is immediately adjacent. The river front that PAR envisions for its log terminal instead is being restored to its natural habitat state. None of the property is available for use as a log terminal. Indeed, there is no space for such use given the College's plans for the property. No port authority or anyone else has approached the Foundation to buy the property for any rail-dependent use, nor is the property for sale for that use, nor would the Foundation entertain plans for such use. The Foundation is assisting the College on converting the property into a college campus.

In sum, North Idaho College Foundation wishes to make clear that the suggestion in PAR's pleading that there is any potential for shippers at the former DeArmond mill site is without any foundation in fact whatsoever, and in fact is contrary to the facts. There is no potential for rail use at that site.

The Foundation is also concerned about the implications that continued rail use would have for access to the former DeArmond mill site for the Foundation's purposes. As indicated, the site is being developed as an extension of the North Idaho College campus. Plans call for new and improved surface transportation

(roads) across the currently existing rail line proposed for abandonment. These additional crossings and improvements may not be possible if rail use continues.

It is our understanding that Stimson Lumber Company still owns the former Atlas mill site. We note that PAR states that it proposes that this mill site would serve as the non-existent Port District's "main terminal and industrial park." PAR Reply at p. 6. It is common knowledge in the community that Stimson Lumber Company has contracted to sell that entire mill site to a developer proposing high end residential development on the entire site. This use is incompatible with any industrial or other rail-dependent use of the site. It follows that there is no potential shipper at that site either. Once again, PAR's representations are contrary to the facts.

In short, PAR not only fails to show any existing or potential shipper on the corridor, but also suggests future rail use at two sites whose owners (or prospective owner in the case of the Atlas site) intend quite the opposite.

BNSF represents that it intends to retain MP 6.10 to 8.66 (the first 2.56 segment of the right of way) for car storage. There are no shippers on that segment so the fact that no public or public-related development is planned there is, or should be, irrelevant to the question whether an OFA exemption should be granted. The remaining segment, from MP 8.66 to MP 12.33, is, as BNSF represented, to be transferred to private and public parties "for continued development of the area's educational corridor."

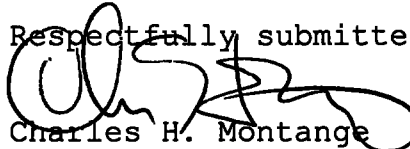
BNSF Petition at 7. That is the segment on which the former DeArmond and Atlas mill sites are located. City of Coeur d'Alene, in cooperation with North Idaho College Foundation, and various other public and private parties, has extensive plans and agreements for development of this property for public purposes and compatible private purposes, including trails serving to connect the North Idaho College campus and educational facilities with the community. PAR offers no basis to upset or to delay these plans. No public agency is seeking or supporting continued rail use of this line. Instead, there is a valid public purpose for abandonment of that property, and, since the facts belie any need for rail, there is clearly "no overriding public need for continued rail service." Los Angeles, supra, slip at 5 and 6.

As with the OFA party in Los Angeles, PAR here identifies no shipper, or potential shipper (let alone provides a verified statement or letter from one), offers no business plan, and, even worse than in the Los Angeles case, seems to predicate future rail business on the involvement of a port authority that does not exist using property that it turns out is being devoted to most decidedly non-rail purposes. Under the circumstances, an exemption from OFA provisions is appropriate and should be granted.

Given the bona fide public interests involved from MP 8.66 to end of line, given the lack of any public agency seeking or supporting continued rail use of any sort, and given that PAR predicates its case on potential shippers on property where there

can be no potential shippers as well as the other factors stated above, PAR fails to state a grounds for denial of the relief sought by BNSF. PAR's evidence to date, under analysis, demonstrates that PAR has no basis for an OFA.

Respectfully submitted,

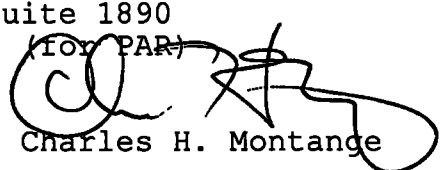

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Certificate of Service

I certify service by posting copies of the foregoing by depositing same for express (next business day) delivery, this first day of October, 2009, addressed to:

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